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Eric Jackson Mechanical Contractors and International Brotherhood of Electrical Workers, Local 136. Cases 10-CA-28432, 10-CA-28477, and 10-CA-28478

May 10, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN
AND FOX

Upon charges and amended charges filed by the Union on various dates between May 2 and September 24, 1995, the General Counsel of the National Labor Relations Board issued a consolidated complaint on September 26, 1995, and an amended consolidated complaint on February 28, 1996, against Eric Jackson Mechanical Contractors, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charges, amended charges, consolidated complaint, and amended consolidated complaint, the Respondent failed to file an answer to the consolidated complaint or the amended consolidated complaint.

On April 9, 1996, the General Counsel filed a Motion for Summary Judgment with the Board. On April 12, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaints affirmatively note that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated February 6, 1996, notified the Respondent that unless an answer to the consolidated complaint were received by February 14, 1996, a Motion for Summary Judgment would be filed.¹

¹ Although no further reminder or warning of the consequences of failing to file an answer to the amended consolidated complaint was sent or given to the Respondent, this does not warrant denial of the

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Florida corporation with offices and places of business in Florida and jobsites in Birmingham and Fairfield, Alabama, provides electrical contracting services. During the past calendar year, a representative period, the Respondent purchased and received in interstate commerce at its Deland, Florida location goods valued in excess of \$50,000 directly from sources located outside the State of Florida. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

During the period February 28 through March 28, 1995, the Respondent, at its Alabama jobsites, refused to hire the following individuals because of their membership in and/or support for the Union:

Robert Hamner	Tim Bryant
Larry McClellan	Waylen Miller
J. M. Hardin	Mike Perry
Jackie Smith	Ted Hubbard
William C.	Raymond Hale
Taylor Jr.	Levan Foster
Jerald Myers	Cecil Buchanan
Alton Beasley	Brian Taylor
Mark Gamble	

About March 6 and 10, 1995, the Respondent, at its Alabama jobsites, refused to hire the following individuals because of their membership in and/or support for the Union:

Mike Cooper	Donald Rothacher
William Gann	
Greg Taylor	Steve Wafford

At all material times the Respondent has maintained and enforced a policy that prohibited its employees from engaging in any union or other protected concerted activities in nonworking areas and during nonworking time while these employees were working on the property of Sears, Roebuck and Company in Fairfield, Alabama.

From about March 20 to April 3, 1995, the following employees concertedly engaged in a strike at the

motion. See, e.g., *Superior Industries*, 289 NLRB 834, 835 fn. 13 (1988).

Respondent's Fairfield, Alabama jobsite to protest the unfair labor practices described above:

Perry Preston	Don Collar
Charles Palmer	Mike Guthrie
Glenn Cornelius	

About April 3, 1995, these employees terminated their unfair labor practice strike and made unconditional application to the Respondent for reinstatement. Since April 3, 1995, and continuing to date, the Respondent has failed and refused to reinstate these employees to their former positions of employment. The Respondent engaged in this conduct because the employees engaged in the union and concerted protected activity described above.

About May 16, 1995, the Respondent refused to hire Robert Hamner at its Alabama jobsite because of his membership in and/or support for the Union.

At all material times, the Respondent has modified its hiring policies and procedures so as to avoid hiring job applicants who are members or supporters of the Union.

At all material times the Respondent and Action Labor, a Florida corporation, had been parties to a practice or arrangement whereby Action Labor referred individuals to employment at the Respondent's Alabama jobsites to be supervised and directed in their daily working conditions by agents of the Respondent. At all material times the Respondent and Action Labor, by virtue of this arrangement, have been joint employers of the employees referred by Action Labor to the Respondent's Birmingham and Fairfield, Alabama jobsites.

About May 10, 1995, the Respondent caused the termination of the following employees who had been referred to its Alabama jobsite by Action Labor:

Robert Hamner	Raymond Hale
Mike Roberts	

The Respondent engaged in these acts and this conduct because the named employees had engaged in activities on behalf of, and in support of, the Union.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been discriminating in regard to the hire and tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease

and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has unlawfully maintained and enforced a policy that prohibited its employees from engaging in any union or other protected concerted activities in nonworking areas and during nonworking time, we shall order the Respondent to rescind that policy. Furthermore, having found that the Respondent has violated Section 8(a)(3) and (1) by refusing to hire, failing and refusing to reinstate, or causing the termination of employees because of their membership in and/or support of the Union, or because they engage in union or concerted protected activity, we shall order the Respondent to offer them immediate and full employment to the jobs for which they would have been hired, or reinstatement to their former jobs, whichever is applicable or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful discharges, and to notify the discriminatees in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Eric Jackson Mechanical Contractors, Deland, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to hire individuals because of their membership in and/or support for the Union.

(b) Maintaining or enforcing a policy that prohibits employees from engaging in any union or other protected concerted activities in nonworking areas and during nonworking time.

(c) Failing or refusing to reinstate employees to their former positions of employment because they engage in an unfair labor practice strike or other union or concerted protected activity.

(d) Modifying its hiring policies and procedures so as to avoid hiring job applicants who are members or supporters of the Union.

(e) Causing the termination of employees because they had engaged in activities on behalf of, and in support of, the Union.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind its policy that prohibits its employees from engaging in any union or other protected concerted activities in nonworking areas and during nonworking time.

(b) Within 14 days from the date of this Order, offer the following employees immediate and full employment to the jobs for which they would have been hired, but for the discrimination against them, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed:

Robert Hamner	Mike Perry
Larry McClellan	Ted Hubbard
J. M. Hardin	Raymond Hale
Jackie Smith	Levan Foster
William C.	Cecil Buchanan
Taylor Jr.	Brian Taylor
Jerald Myers	Mike Cooper
Alton Beasley	Donald Rothacher
Mark Gamble	William Gann
Tim Bryant	Greg Taylor
Waylen Miller	Steve Wafford

(c) Make the foregoing employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(d) Within 14 days from the date of this Order, offer the following employees immediate and full reinstatement to their former jobs with the Respondent, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed:

Perry Preston	Don Collar
Charles Palmer	Mike Guthrie
Glenn Cornelius	Robert Hamner
Raymond Hale	Mike Roberts

(e) Make the foregoing employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(f) Within 14 days from the date of this Order, expunge from its files any and all references to the unlawful discharges and within 3 days thereafter notify the discriminatees in writing that this has been done and that the discharges will not be used against them in any way.

(g) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(h) Within 14 days after service by the Region, post at its facility in Deland, Florida, and its jobsites in Birmingham and Fairfield, Alabama, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities or jobsites involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 2, 1995.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 10, 1996

William B. Gould IV, Chairman

Charles I. Cohen, Member

Sarah M. Fox, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to hire individuals due to their membership in and/or support for International Brotherhood of Electrical Workers, Local 136.

²If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT maintain or enforce a policy that prohibits employees from engaging in any union or other protected concerted activities in nonworking areas and during nonworking time.

WE WILL NOT fail or refuse to reinstate employees to their former positions of employment because they engage in an unfair labor practice strike or other union or concerted protected activity.

WE WILL NOT modify our hiring policies or procedures so as to avoid hiring job applicants who are members or supporters of the Union.

WE WILL NOT cause the termination of employees because they had engaged in activities on behalf of, and in support of, the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind our policy that prohibits our employees from engaging in any union or other protected concerted activities in nonworking areas and during nonworking time.

WE WILL, within 14 days from the date of the Board's Order, offer the following employees immediate and full employment to the jobs for which they would have been hired, but for the discrimination against them or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed:

Robert Hamner	Mike Perry
Larry McClellan	Ted Hubbard
J. M. Hardin	Raymond Hale
Jackie Smith	Levan Foster

William C.	Cecil Buchanan
Taylor Jr.	Brian Taylor
Jerald Myers	Mike Cooper
Alton Beasley	Donald Rothacher
Mark Gamble	William Gann
Tim Bryant	Greg Taylor
Waylen Miller	Steve Wafford

WE WILL make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, less net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, offer the following employees immediate and full reinstatement to their former jobs with us or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed:

Perry Preston	Don Collar
Charles Palmer	Mike Guthrie
Glenn Cornelius	Robert Hamner
Raymond Hale	Mike Roberts

WE WILL make the foregoing employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, expunge from our files any and all references to the unlawful discharges, and WE WILL, within 3 days thereafter, notify the discriminatees in writing that this has been done and that the discharges will not be used against them in any way.

ERIC JACKSON MECHANICAL CONTRACTORS